amo REPORT

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# 88-9 MUNICIPAL AUTHORITY TO REGULATE OCCUPANCY ON THE BASIS OF RELATIONSHIP

THE ASSOCIATION OF MUNICIPALITIES OF ONTARIO
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# ASSOCIATION OF MUNICIPALITIES OF ONTARIO

The Association of Municipalities of Ontario, a non-partisan voluntary organization, is united to promote the values of the municipal government system and the status of the municipal level of government as a vital and essential component of the total inter-governmental framework of Ontario and Canada.

The Association acts as the collective voice of Ontario's municipal governments and is organized to accomplish through cooperation and coordination, what the majority have neither the time nor the resources to do individually.

The Association represents some seven hundred (700) municipal governments throughout Ontario. The governing body is composed of some eighty (80) municipal elected and appointed officials, who in turn represent a wide-range of municipal government interest.

The following sections and affiliated municipal professional associations form an important part of the Association's structure and therefore, play an important part in its activities in terms of the Board of Directors, program and policy development:

**Association Sections:**

* County and Regional Section
* Large Urban Section
* Northern Ontario Section (FONOM/NOMA)
* Rural Section (ROMA)
* Organization of Small Urban Municipalities Section

**Association Affiliates:**

* Association of Municipal Clerks and Treasurers of Ontario
* Association of Municipal Tax Collectors of Ontario
* Municipal Engineers Association
* Ontario Municipal Administrators Association
* Ontario Municipal Personnel Association
* Ontario Municipal Social Services Association
* Society of Directors of Municipal Recreation of Ontario
* Urban Finance Officers Association of Ontario

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## INTRODUCTION

It has long been the realization of municipalities that in order to plan for orderly growth and development and to allow for the separation of incompatible uses, strong and effective methods of designating land for certain purposes have had to be devised. Over the years, municipalities have been given the control to regulate the designation of land use through recognized zoning provisions.

The ability of municipalities to zone for particular types of land uses in certain areas is guaranteed in the Planning Act, 1983 which spells out, in Section 34 of the Act, powers of municipalities relating to land use controls and related administration. In addition to municipal authority to regulate location of land uses, the Planning Act allows for local authority over the use of individual buildings or structures within designated land uses.

In an effort to enhance, preserve and protect existing and future residential neighbourhoods, many municipalities have adopted provisions which limit to some extent, the degree of occupancy of residential premises. While municipalities have not, traditionally, attempted to place limits on the size of families which occupy residential units, many municipalities, in an attempt to establish reasonable occupancy limits, have imposed restrictions on the numbers of unrelated occupants which reside in one dwelling unit.

This, in part, appears to have stemmed from a realization that traditional family relationships generally tend to live by standards which have always been deemed to be acceptable to the community at large. It has been generally accepted, therefore, that municipalities need not attempt to limit occupancy levels unless it is agreed that some traditional occupancy related activities have an adverse affect on the appearance, noise level or general enjoyment of the neighbourhood by others, i.e. property standards, parking, noise levels.

Given that this standard assumption is generally accepted by many communities, it has also been accepted that where there are high levels of occupancy of residential units, there are often neighbourhood impacts which are deemed to be generally unacceptable to the enjoyment of the neighbourhood by others. This has resulted in the passage of many by-laws by municipalities, that serve to place occupancy limits on residential units without impacting on "families". Such by-laws, which typically limit occupancy to five or four or three or two "unrelated persons", depending on the municipality, have come to be known as "exclusionary by-laws".

While these types of by-laws exist throughout many municipalities across the Province, the housing and affordability crisis which has grown in intensity in recent years, has identified such by-laws as a possible undesirable hindrance to housing accomodation. The selection of this particular municipal power as one which has been identified as being somewhat discriminatory to a segment of the population, has resulted in the Association being approached and requested to respond to how municipalities can best achieve the objective of eliminating discrimination between related and unrelated persons, while at the same time enabling municipalities to preserve balanced neighbourhoods.

Through the examination of this issue by a committee of the Association's Large Urban Section, comprised of both municipal politicians and senior municipal planning officials, the Association has attempted to consider how, and indeed if, such an objective can be attained.

## BACKGROUND

On January 7th, 1988, Mr. Cam Jackson, M.P.P., Burlington South introduced Private Members Bill 94: An Act to prohibit discrimination by Municipalities against Unrelated Persons Occupying Residential Property. The Bill proposed amending the Planning Act, 1983 by adding the following section to it:

> "**34a.** The authority to pass by-laws provided in subsections 34(1) and 37(1) does not include and shall be deemed never to have included the authority to pass by-laws that distinguish between persons who are related and persons who are unrelated in respect of the occupancy of a building or structure."

In addition, the Association became aware of press reports which quoted Premier David Peterson, while campaigning in a London by-election in March, 1988 of making statements in reference to "discriminatory" by-laws. The Premier, while speaking to a student group concerned with the shortage of available housing, made the following statement:

> "I think these by-laws are a problem. They're arbitrary, they're discriminatory. Municipalities have a responsibility to help solve some of the (housing) problems."

This statement, coupled with other reports from the Ministry of Municipal Affairs made it clear to the Association that while Bill 94 is a Private Members Bill, the government is, at least from a philosophical point of view, supportive of the general intent of the Bill.

On April 14, 1988, the Association forwarded a letter to the Honourable John Eakins, Minister of Municipal Affairs advising of the Association's opposition to Bill 94 on the basis that establishing certain levels on the use of residential buildings is an essential component of neighbourhood preservation and the resultant enjoyment of private residential property free from nuisance. In addition, the Association advised that it is opposed to any further diminution of the power of municipalities with respect to zoning matters. As well, the Association advised that the provisions of Bill 94 serve to remove certain degrees of municipal authority and autonomy and is therefore contrary to the spirit and thrust of the Planning Act, 1983.

In July, 1988, the Association became aware that it would be requested to reconsider its position on this matter and, on September 15, 1988, the Association received a letter that formally requested the Association to review the issue of unrelated persons by-laws again. In particular, the Association was asked to advise the Minister of it's suggestions on:

1. How best to achieve the objectives of eliminating discrimination between related and unrelated persons, while at the same time enabling municipalities to preserve balanced neighbourhoods.

2. The specific administrative, regulatory or legislative tools, required by municipalities to preserve balanced neighbourhoods.

The Association was advised that it's response to this particular request would be required by the end of October 6th, 1988 so that something could be incorporated into Bill 128: An Act to amend the Planning Act which is currently at First Reading stage in the legislative process.

## AMO POSITION ON THE SUBJECT OF EXCLUSIONARY BY-LAWS

The Association of Municipalities of Ontario considered, in great detail, the possible effect on residential neighbourhoods of eliminating the ability to distiguish between occupants of residential dwellings on the basis of relationship.

If municipalities were to lose this ability, those municipalities with exclusionary by-laws currently in place would be faced with two basic options:

1. Adopt some form of numerical or density limit on the occupancy of residential buildings.

2. Not adopt numerical or density limits on the occupancy of residential buildings but attempt to deal with potential neighbourhood impacts through various piecemeal planning approaches such as property standards by-laws, parking by-laws, noise by-laws, etc.

### Option 1

If municipalities were to adopt option one and continue to establish a numerical or density limit for occupancy, the Association recognizes that traditional families would be adversely affected once the numerical limit is exceeded. While there could be some mechanism to allow for an easily approved minor variance in this case, the Association is of the view that this approach would not be feasible in any municipality.

### Option 2

The Association considered this in great detail in terms of the various planning approaches which municipalities have avialable to them as regulatory mechanisms. Given that the municipality is primarily concerned with the outward physical appearance of a dwelling unit as well as other neighbourhood impacts such as noise and related inconvenience, it was originally felt that this could be an option.

However, the Association recognizes that there are problems with attempts to regulate based on existing planning tools. For example, no numerical limit on residential occupancy may result in the parking of a large number of vehicles around a given single family house. In certain cities where automobiles are deemed to be necessary, this could be a good regulatory mechanism. However, in cities with extensive urban transit systems, the regulation of parking may be of limited use.

As well, regulation through property standards by-laws is recognized as an imperfect approach. The vast majority of municipalities do not have the staff to adequately enforce property standards by-laws, and it is clear that if there were no numerical limits on building occupancy, that the need for such staff resources would grow significantly. In addition, it is widely held that municipalities do not have the ability to adequately enforce property standards by-laws from a legal point of view. This is discussed further on in the report.

In addition, for the municipality to regulate of the basis of nuisance or noise is reliant upon some form of complaint system which is ad hoc at best. At what point do neighbours make a complaint with respect to noise and nuisance? Are there other factors that may prevent a neighbour from lodging a complaint?

Another option considered was allowing municipalities to require certain types of rental accomodation to be owner occupied. Given that property standards generally tend to be more effectively followed when rental accomodation is owner occupied, the Association recognized that this could also pose problems for existing accomodation rented by families. Given that owner occupancy requirements could adversely affect the supply of rental accomodation, this option was abandoned.

The Association disagrees with the statement that to regulate on the basis of related or unrelated occupants is a form of discrimination. Various court cases have determined after lengthy discussion that the present provisions of the Planning Act under Sections 34 and 37 are not found to be discriminatory.

In the case of Smith vs. the Township of Tiny, the Supreme Court of Ontario ruled that, a description of a particular type or group of persons, "based on a definition of "family" which incorporates most types of arrangement usual for people living together or a single housekeeping unit cannot be said to be unreasonable or discriminatory or to constitute zoning based on the relationship of the occupants".

The Association strongly feels that the reason for the development of unrelated persons by-laws in the first place was not based on discrimination of any sort, but based on the fact that the vast majority of families are self-regulating. In attempting to eliminate definitions related to relationship, the Association is of the view that a reverse form of discrimination against families is developed as municipalities can regulate on the basis of density provisions only. This could lead to conditions where large related families are adversely affected to the point where they may have to seek special approval to continue occupying a residential dwelling.

In addition, the Association would point out that the present form of by-laws are broad enough to accommodate virtually any number of related persons. By removing the difference between related and unrelated persons, the housing availability problem could be compounded as a result of having more individuals living in fewer rental units.

The Association would add that individual municipalities are in the best position to determine their individual circumstances. For example, a numerical limit of "6" unrelated persons for a university city may be appropriate whereas a numerical limit of "4" unrelated persons may be desirable for a relatively new residential neighourhood

without colleges or universities nearby. This form of municipal autonomy applies to existing zoning in many other ways such as in the selection of certain uses for different commercial zones or lot sizes. For example, while urban municipalities may currently designate lot sizes at 40 foot frontages, certain rural municipalities may designate lot sizes at 150 foot frontages. The Association suggests that this question of "scale", which includes limiting occupancy, has always been part of a municipality's authority and should remain so.

**RECOMMENDATION 1**

**The Association of Municipalities of Ontario is strongly supportive of the continuation of the use of the definition of "family" within municipal zoning by-laws as municipalities see fit, including the concept of "relationships" in that "families" are essentially self-regulating units and any removal of the definition of relationship would serve to negatively impact on current established family arrangements. The Association would suggest that municipalities adopt definitions of family which have been found to be reasonable in any one of the many court cases on the issue.**

The present provisions of the Planning Act which allow for the regulation of land use and the regulation of the use of single family dwellings cannot be tied to the availability of affordable housing. However, if municipalities were only allowed to use density provisions as a means to regulate occupancy, the present situation could worsen considerably. The Association recognizes that this proposal will in no way increase the supply of affordable housing but will merely allow for more people to live in less comfortable housing arrangements.

The Association recognizes that there is an affordability problem but there are two distinct issues involved, affordable housing for students which are of much greater concern to those municipalities with large colleges and universities, and an overall general supply problem. The Association would encourage the Provincial government to examine ways of actually increasing the supply of both student housing and, more generally, of affordable, including rental, accommodation.

**RECOMMENDATION 2**

**The Association would encourage the Provincial government to actively examine ways in which to increase the actual supply of affordable rental accomodation.**

**RECOMMENDATION 3**

**The Association requests that colleges and universities around the Province take advantage of Provincial government funding and construct more student housing.**

The Association would once again like to raise the issue of enforcement with respect to dwelling unit related by-laws. As mentioned in previous Association reports, the

Association is concerned with the difficulty which building inspectors have in terms of inspecting residential units for violation of maintenance and occupancy by-laws.
Should municipalities continue to use numerical or density limits to control the occupancy of residential units, the Association would request that the Province review existing municipal authority in terms of entry provisions with a view to enabling municipalities to clearly enforce their by-laws.

**RECOMMENDATION 4**

**The Association requests that the Province review existing municipal authority to enter and inspect residential dwellings so that municipalities can effectively enforce municipal by-laws.**

## CONCLUSION

The Association of Municipalities appreciates the opportunity to offer its comments on this issue. The Association is of the view that limits on unrelated persons are not intended to be discriminatory in any way, but are merely put into place as a means of neighbourhood protection and preservation. The Association would point out that all by-laws, by their nature, are restrictive of some form of activity. The removal of the authority to establish such exclusionary by-laws would adversely affect a number of communities by altering effectively proven municipal standards and thereby adversely affecting existing standard family occupied housing.

The Association recognizes that there is an affordable housing crisis facing many urban communities in Ontario but that the removal of the municipal authority to establish exclusionary by-laws will not necessarily impact upon the availability of affordable housing and may, in fact, affect the availability of affordable housing in a negative manner.

The current housing problems need to be addressed from the fundamental root of the problem, lack of supply of affordable accommodation. While municipalities have an obligation to address this issue, the power to effectively deal with the supply question lies with the Provincial government.

## APPENDIX A

## LARGE URBAN SECTION SPECIAL SUB-COMMITTEE ON UNRELATED PERSONS BY-LAWS

Grant Hopcroft, Alderman, City of London and Chairman

Peter Atcheson, Planning Director, City of Brantford

Gary Bloor, Alderman, City of York

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